
General instructions

Who must file

A partnership must file Form 58, North Dakota Partnership Return Of Income, if it is required to file a federal partnership return (Form 1065 or Form 1065-B) and it carries on business, or derives income from sources, in North Dakota.

Limited liability company (LLC). If an LLC is treated like a partnership for federal income tax purposes, it is a partnership for North Dakota income tax purposes.

Financial institution. If a partnership meets the definition of a financial institution under N.D.C.C. ch. 57-35.3, it must file North Dakota Form 35, Financial Institution Tax Return, instead of Form 58.

Signature. Form 58 must be signed by a general partner (or LLC member, if applicable) or an authorized representative.

Nonfiler penalty. If a partnership fails to file Form 58 after notice to file is given by the Tax Commissioner, a minimum penalty of \$500 may be assessed.

When and where to file

Form 58 must be filed on or before the 15th day of the 4th month following the close of the tax year. Mail the return to: Office of State Tax Commissioner, 600 E. Blvd. Ave., Dept. 127, Bismarck, ND 58505-0599.

W-2/1099 reporting

Every partnership doing business in North Dakota that is required to file Federal Form 1099 or W-2 must also file one with the Office of State Tax Commissioner. For more information, obtain the *Income Tax Guideline: Information Returns*.

Tax incentives

Income exemptions and tax credits may be available to the partners in a partnership that makes a qualifying investment in any of the following:

- ND venture capital corporation (N.D.C.C. ch. 10-30.1)
- ND Small Business Investment Company (N.D.C.C. ch. 10-30.2)
- ND certified development corporation (N.D.C.C. § 10-33-124)
- Qualified seed capital business (N.D.C.C. ch. 57-38.5)
- ND renaissance zone or renaissance fund organization (N.D.C.C. ch. 40-63)

- ND new and expanding business (N.D.C.C. ch. 40-57.1)
- ND agricultural commodity processing facility (N.D.C.C. ch. 57-38.6)
- Geothermal, solar, or wind energy device (N.D.C.C. § 57-38-01.8)
- Blending biodiesel fuel (N.D.C.C. § 57-38-01.22)
- Biodiesel fuel equipment (N.D.C.C. § 57-38-01.23)

For more information on these incentives, contact the Office of State Tax Commissioner.

Apportionment and allocation by partnership

A partnership that carries on its business entirely within North Dakota must report all of its income or loss to North Dakota.

A partnership that carries on its business both within and without North Dakota must apportion and allocate its income or loss to North Dakota in a manner similar to a multistate corporation under the provisions of N.D.C.C. ch. 57-38.1. Also see N.D. Admin. Code ch. 81-03-09.

Exception to apportionment/allocation calculations. If all of its partners are North Dakota resident individuals, estates or trusts, a multistate partnership does not have to use the apportionment and allocation provisions to complete Form 58. Resident individual, estate and trust partners must report to North Dakota their entire distributive share of the partnership's federal income or loss, regardless of where the partnership carries on its business.

Reporting of income loss by partners

A partnership is not subject to North Dakota income tax. Its income or loss is passed through to its partners. The amount of income or loss that a partner must report to North Dakota and the forms and procedures that apply depend on the type of partner, as explained below.

Resident individual, estate or trust. Resident individual, estate or trust partners must report to North Dakota their entire distributive share of the partnership's income, gains, and losses, as determined for federal income tax purposes. This applies even though the partnership is required to apportion and allocate its income or loss to North Dakota for purposes of determining the income or loss reportable to North Dakota by nonresident partners. The partnership is not required to provide any statement or other information to resident individual, estate or trust partners.

Nonresident individual, estate or trust.

Nonresident individual, estate or trust partners must report to North Dakota their distributive share of the partnership's income or loss that is apportioned and allocated to North Dakota. The partnership must provide each of its nonresident individual, estate and trust partners with a statement informing the partner about the requirement to file a North Dakota income tax return and showing the partner's distributive share of North Dakota income or loss. A nonresident individual must file either Form ND-1 or Form ND-2, and a nonresident estate or trust must file Form 38.

Corporation, partnership or limited liability company (LLC). A corporation, partnership or LLC must file a North Dakota income tax return if it derives income from a partnership which does business, or derives income from sources, in North Dakota. The partnership must provide its corporation, partnership and LLC partners with a statement informing them about the requirement to file a North Dakota income tax return. Special rules apply for determining the amount of income or loss taxable by North Dakota in the case of a corporation, partnership or LLC partner. A regular corporation must file Form 40 and an S corporation must file Form 60. A partnership must file Form 58. The type of return, if any, that must be filed by an LLC depends on its entity classification for federal income tax purposes.

Composite return

A composite filing method is allowed as an alternative method of filing for nonresident individual partners. Under this method, one individual income tax return, referred to as a "composite return," may be filed by the partnership on behalf of two or more eligible partners. For details, obtain the *Income Tax Guideline: Composite Filing Method*.

Income tax withholding

Starting with taxable years beginning on or after January 1, 2006, a partnership must withhold income tax from the year-end distributable share of income of a nonresident individual partner. For more information as well as exceptions to this requirement, see **Pass-Through Entity Withholding** under **What's New!** at www.nd.gov/tax.

Assistance

For forms or assistance, call (701) 328-3450. Speech or hearing impaired persons may call us through Relay North Dakota at 800-366-6888 (ask for 701-328-3450).

Persons having Internet access may obtain forms, submit questions or comments, and find other information on our Web site at:

www.nd.gov/tax.

Specific line instructions for page 1

Line 1

North Dakota follows the federal method for reporting the disposition of property for which an I.R.C. Section 179 expense deduction was claimed in prior years by a partnership. Do not report these dispositions on Form 58.

Line 4

Enter the following on this line:

- Interest from state and local obligations other than North Dakota and its political subdivisions.
- ACRS depreciation deducted on the federal partnership return for all assets placed in service from January 1, 1981, through the end of the 1982 tax year. Do not include ACRS depreciation on assets under a safe harbor lease that is not recognized by North Dakota—see **Safe harbor lease** below. (See **line 6 instruction for a corresponding subtract adjustment.**)
- **Safe harbor lease.** Section 168(f)(8) of the Internal Revenue Code (covering safe harbor leases) was not adopted by North Dakota where the minimum investment by the lessor is less than 100%. If this applies, and the partnership is the buyer/lessor under the lease, enter on this line the related interest expense, amortization expense, acquisition costs, losses, and depreciation included in the partnership's federal income or loss. If the partnership is the seller/lessee, enter on this line the related sale proceeds, rent expense, amortization expense, and acquisition costs included in the partnership's federal income or loss.

Line 6

Enter the following on this line:

- Interest from U.S. obligations and other securities that is exempt from state income tax under federal law, including the portion of dividends received from a regulated investment company (mutual fund) attributable to the mutual fund's investment in the same kinds of securities. Unless already identified on the federal partnership return, attach a schedule specifically identifying the source and amount of interest and dividends.
- Depreciation that would have been allowed for the current tax year on ACRS recovery property placed in service from January 1, 1981, through the end of the 1982 tax year using methods allowed under the Internal Revenue Code as amended through December 31, 1980. Do not include

depreciation on assets under a safe harbor lease that is not recognized by North Dakota—see **Safe harbor lease** below. (See **line 4 instruction for a corresponding addback adjustment.**)

- **Safe harbor lease.** Section 168(f)(8) of the Internal Revenue Code (covering safe harbor leases) was not adopted by North Dakota where the minimum investment by the lessor is less than 100%. If this applies, and the partnership is the buyer/lessor under the lease, enter on this line the related rental income included in the partnership's federal income or loss. If the partnership is the seller/lessee, enter on this line the related interest income included, and depreciation *not included*, in the partnership's federal income or loss. For this purpose, ACRS recovery property placed in service from January 1, 1981, through the end of the 1982 tax year must be depreciated using methods allowed under the Internal Revenue Code as amended through December 31, 1980.

Income exemption. If the partnership was granted an income exemption under N.D.C.C. ch. 40-57.1 or 40-63, **do not** enter the exempt portion of the partnership's income on this line. In general, the partners may be able to claim their respective shares of the exempt amount on their tax returns. Contact the Office of State Tax Commissioner for more information.

Line 8a

Enter on this line nonbusiness income, net of related expenses, that is allocable under N.D.C.C. ch. 57-38.1. Include all allocable income whether allocable to North Dakota or outside North Dakota. Expenses must be attributed to allocable income based on a method which fairly distributes all expenses to the partnership's various kinds of income. **Attach a schedule identifying each item of allocable income, the related expenses, and an explanation of the basis for allocating the item.**

Line 8b

Professional service partnership

If the partnership is a "professional service partnership," enter on this line the portion of guaranteed payments made to all individual partners as a reasonable salary for personal services, regardless of where the services are performed. A "professional service partnership" is a partnership that engages in the practice of:

- Law.
- Accounting.
- Medicine.
- Any other profession in which the capital or the services of employees are not a material income-producing factor. The services performed by the partners themselves must be the primary income-producing factor.

A professional service partnership does not include one that primarily engages in wholesale or retail sales activity, manufacturing activity, or other types of activities in which the capital or the services of employees are a material income-producing factor.

Attach a statement to the return showing the names of the individual partners and the portion of the amount on this line paid to each one.

Line 12a

Enter on this line the portion of the amount on line 8a allocable to North Dakota under N.D.C.C. ch. 57-38.1.

Line 12b

Professional service partnership

Enter on this line the portion of the amount on line 8b that was paid to nonresident individual partners for services performed in North Dakota. **Attach a statement to the return showing the names of the nonresident individual partners and the portion of the amount on this line paid to each one.**

Specific line instructions for page 2

Schedule A

In Schedule A, enter the name and federal ID number of all partners. Complete the **Apportioned income (loss)** and **Allocable income (loss)** columns for all partners *except* North Dakota resident individual, estate, and trust partners as follows:

Multiply the amount on page 1, line 11, by the partner's distributive share percentage and enter the result in the **Apportioned income (loss)** column.

Multiply the amount on page 1, line 12a, by the partner's distributive share percentage and enter the result in the **Allocable income (loss)** column. In the case of a nonresident individual partner, include in the amount entered in this column the guaranteed payments for personal services performed in North Dakota (reported on page 1, line 12b) paid to the partner.

Schedule B

Complete Schedule B if the partnership carries on its business both within and without North Dakota. The rules for determining the property, payroll and sales factors are contained in N.D.C.C. ch. 57-38.1 and N.D. Admin. Code ch. 81-03-09. However, a partnership does **not** have to complete Schedule B if it conducts all of its business in North Dakota or all of its partners consist only of North Dakota resident individuals, estates, and trusts.